

**REMARKS**

Claims 23-106 are pending in the application.

Claims 23-106 stand rejected.

Claims 23-28, 30-34, 37, 42, 44-45, 47, 60, 68, 70, 83, 88, 90-91 and 97 have been amended. No new matter is added thereby.

Claim 107 has been added.

**Rejection of Claims under 35 U.S.C. § 103**

Claims 23-106 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beck, et al., U.S. Patent No. 6,332,154 (Beck), in view of Aditya, U.S. Patent No. 6,718,393 (Aditya).

While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

In order for a claim to be rendered invalid under 35 U.S.C. § 103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. § 103(a). This requires: (1) the references must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

To this end, independent claim 37, as amended, now recites:

37. A method comprising:

receiving an event via a channel driver, wherein

the channel driver is communicatively coupled to a communication channel,

the event is communicated according to a media type of the communication channel, and

the media type of the communication channel is one of a plurality of media types; and

providing a notification of the event via a user interface, wherein

the notification is provided by a communication server,

the communication server is independent of the media type of the communication channel by virtue of being configured to use the channel driver to communicate with the communication channel,

the media type of the communication channel is one of a plurality of media types, and

the channel driver is configured to communicate with any of the media types.

As will be appreciated, the remaining independent claims 23, 42, 44-45, 60, 65, 67-68, 83, 88, 90-91 and 96-97 recite comparable limitations. By contrast, Beck, which is concerned with the provision of a media-independent self-help modules within a multimedia communication-center customer interface, discloses:

“In a multimedia call center (MMCC) operating through an operating system, a client-specific self-help wizard is provided for active clients and updated periodically with information related to client transaction history with the MMCC. A connected client is presented by the wizard with a selective media

function through which the client may select a media type for interaction and help, and the MMCC will then re-contact the client through the selected media. The client, for example, may select IP or COST telephony, and the MMCC will place a call to the client to a number or IP address listed for the client, and interactivity will then be through an interactive voice response unit. Help information specific to a client is updated in the client's wizard periodically according to ongoing transaction history with the MMCC. The wizard may also monitor client activity with the wizard and make reports available to various persons.” (Beck, Abstract)

Also by contrast, Aditya, which is concerned with a system and method for dynamic distribution of data traffic load through multiple channels, discloses:

“A communication system featuring a plurality of nodes in which at least one node is implemented with adaptive driver software following a load balancing scheme that takes into account packet characteristics associated with the data traffic load before dynamically distributing the data traffic among multiple communication channels. Of these communication channels, only one channel is allowed to receive data requests and all of the channels are allowed to transfer data packet(s) to the data requesting node.” (Aditya, Abstract)

As can clearly be seen, neither reference shows, teaches or suggests, and isn't even concerned with, a system in which a channel driver allows the communication server to communicate with a communication channel in a manner independent of the media type of the communication channel by virtue of being configured to use the channel driver to communicate with the communication channel, where the media type of the communication channel is one of a plurality of media types and the channel driver is configured to communicate with any of the media types.

The Office Action does not establish the presence of these limitations in Beck or Aditya, alone or in combination. The burden is on the Examiner to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j).

For the reasons presented above, neither Beck or Aditya, alone or in combination, teach these limitations of claim 37, as well as the other independent claims, as amended.

In addition, Applicants also respectfully submit that the Examiner has not satisfied the burden of factually supporting the alleged motivation to combine the two references. The Examiner's duty may not be satisfied by engaging impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references. The Examiner must therefore provide evidence to suggest the combination and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). [Applicants respectfully submit that the particular parts of the cited references relied upon by the Examiner and the pertinence of each reference has not been clearly explained, especially with regard to the motivation to combine references in the first full paragraph on page M of the Office Action.] Further, the Office action

does not establish that such a combination of the teachings of these references would meet with success, as required.

As noted, Beck is concerned with the provision of a media-independent self-help modules within a multimedia communication-center customer interface. Aditya, however, is concerned with a system and method for dynamic distribution of data traffic load through multiple channels. Aside from failing to delve into the use of a single driver capable of communicating via a variety of media types, neither reference provides any disclosure that would lead one of skill in the art to find motivation to combine the disclosures of Beck and Aditya. As will be appreciated, to the extent necessary, the mechanisms disclosed in Beck provide for the requisite communication functions needed by Beck's customer interface to perform the necessary communications. Similarly, Aditya provides a self-contained solution to dynamically distributing data traffic load through multiple channels. In fact, Applicants are at something of a loss to understand what use a system directed to a user interface (Beck) and a system directed to driver software that provides a load balancing mechanism could be expected to demonstrate a need for one another.

Applicants respectfully submit that such an argument fails to establish a *prima facie* case of obviousness and runs perilously close to a forbidden hindsight analysis of the references. The Office Action makes no showing of a motivation to combine Aditya with Beck from within the references themselves; therefore, it must be presumed that there is none. It is well-established that the best defense to hindsight is a "rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references." See *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000); *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25 (Fed. Cir. 2000). A showing of

combinability must be “clear and particular” and “broad conclusive statements about the teaching of multiple references, standing alone, are not ‘evidence.’” *See Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666 (Fed. Cir. 2000); *Brown & Williamson*, 229 F.3d at 1125.

The reason, suggestion, or motivation to combine may be found explicitly or implicitly: 1) in the prior art references themselves; 2) in the knowledge of those of ordinary skill in the art that certain references, or disclosures in those references, are of special interest or importance in the field; or 3) from the nature of the problem to be solved, “leading inventors to look to references relating to possible solutions to that problem.”

*Ruiz*, 234 F.3d at 665.

The Office Action presents nothing more than broad, generalized statements related to the motivation of a person of ordinary skill, which Applicants respectfully submit is insufficient to support a finding of obviousness. The Office Action does not establish that the references which are combined are of special interest or importance in the field. Indeed, Beck is in the separate and distinct field of user interface systems, rather than the field of Aditya (load balancing packet flows). Nor does the Office Action present any evidence of a problem to be solved from within those references themselves.<sup>1</sup> Instead, the Office Action fabricates such a problem to be solved, not from the teachings of the cited references, but from the teaching of Applicants’ own disclosure.

Using Applicants’ own disclosure as a blueprint for providing the motivation to combine prior art references in an obviousness determination is impermissible. *See W.L. Gore & Assoc. v. Garlock*, 721 F.2d 1540, 1552-53 (Fed. Cir. 1983) (“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record

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<sup>1</sup> There must be a finding that “there was a disadvantage to the prior systems, such that the ‘nature of the problem’ will have motivated a person of ordinary skill to combine the prior art references.” *Id.* at 666.

convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.”).

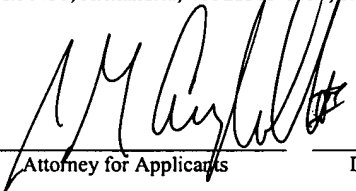
In fact, regardless of the teachings of Beck and Aditya with regard to the purported motivation to combine, if one were to actually combine Beck and Aditya, one would still not arrive at the claimed invention. At best, one would might create a system that would allow a user to communicate through a selected a media type (for interaction and help), secure in the knowledge that the traffic of the communications being had were following a load balancing scheme that takes into account packet characteristics associated with the data traffic load before dynamically distributing the data traffic among multiple communication channels. Such a system, while possibly beneficial, is far removed from a system in which a channel driver allows the communication server to communicate with a communication channel in a manner independent of the media type of the communication channel by virtue of being configured to use the channel driver to communicate with the communication channel, where the media type of the communication channel is one of a plurality of media types and the channel driver is configured to communicate with any of the media types, as in the claimed invention.

For these reasons, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness of independent claims 23, 37, 42, 44-45, 60, 65, 67-68, 83, 88, 90-91 and 96-97, and all claims dependent upon them, and that they are in condition for allowance. Applicants therefore request the Examiner’s reconsideration of the rejections to those claims.

CONCLUSION

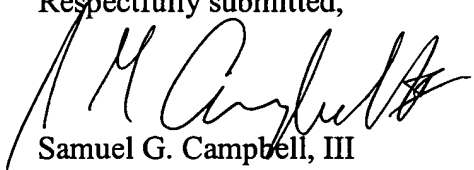
In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 10, 2006.

  
Attorney for Applicants

7/10/06  
Date of Signature

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